



1           5.     Respondent attended a post-evaluation reassessment with the PHP  
2 Contractor. The PHP Contractor opined that Respondent is safe to practice medicine,  
3 provided that Respondent enter into the PHP for a period of five (5) years with additional  
4 terms and conditions incorporating the recommendations of the report provided by the  
5 inpatient facility.

6           6.     The investigation concerning Respondent's professional conduct will be  
7 provided to the Board promptly upon completion for review and action.  
8

9                                   **INTERIM CONCLUSIONS OF LAW**

10           1.     The Board possesses jurisdiction over the subject matter hereof and over  
11 Respondent.

12           2.     Pursuant to A.R.S. § 32-1405(20), if delegated by the Board, the Executive  
13 Director may enter into stipulated agreements with a physician for the treatment,  
14 rehabilitation and monitoring of chemical substance or misuse.

15                                   **INTERIM CONSENT AGREEMENT**

16           IT IS HEREBY ORDERED THAT:

17           1.     Respondent shall enroll and participate in the Board's PHP for a period of  
18 five (5) years.

19           2.     Respondent's practice is restricted in that he shall not practice in a solo  
20 setting and is prohibited from seeing patients out of his home. Additionally, Respondent  
21 shall limit his practice to the hours and extent specified by his inpatient treatment facility,  
22 to wit: Respondent shall not practice more than 25 hours per week, inclusive of on-site  
23 and administrative duties. Respondent shall submit the name of a worksite monitor who  
24 is a licensed health care worker in writing to PHP for approval. The monitor shall be  
25 responsible for observing Respondent's demeanor, relationships with patients,

1 appearance, timeliness and whether Respondent maintains appropriate boundaries with  
2 patients. Respondent shall provide the monitor with a list of all employers and  
3 employees, including full and part-time employers, employees, and locum tenens in  
4 advance of any of Respondent's start date(s). The monitor shall report to PHP at PHP's  
5 discretion. Respondent may submit a written request that the requirement for an on-site  
6 monitor be modified or eliminated after one year.

7 3. Respondent shall not consume alcohol or any food or other substance  
8 containing poppy seeds or alcohol.

9 4. Respondent shall not take any illegal drugs or mood altering medications  
10 unless prescribed for a legitimate therapeutic purpose.

11 5. Respondent shall attend the PHP's relapse prevention group therapy  
12 sessions one time per week for the duration of this Interim Consent Agreement, unless  
13 excused by the relapse prevention group facilitator for good cause. Individual relapse  
14 therapy may be substituted for one or more of the group therapy sessions, if PHP pre-  
15 approves substitution. The relapse prevention group facilitators or individual relapse  
16 prevention therapist shall submit monthly reports to the PHP regarding attendance and  
17 progress.

18 6. If requested by the PHP, Respondent shall attend ninety 12-step meetings  
19 or other self-help group meetings appropriate for substance abuse and approved by the  
20 PHP, for a period of ninety days. Upon completion of the ninety meetings in ninety days,  
21 Respondent shall participate in a 12-step recovery program or other self-help program  
22 appropriate for substance abuse as recommended by the PHP. Respondent shall attend  
23 a minimum of three 12-step or other self-help program meetings per week. Two meetings  
24 per month must be Caduceus meetings. Respondent must maintain a log of all self-help  
25 meetings.

1           7.       Respondent shall promptly obtain a Primary Care Physician ("PCP") who is  
2 also Board-certified in addiction medicine and shall submit the name of the physician to  
3 the PHP in writing for approval. The approved PCP shall be in charge of providing and  
4 coordinating Respondent's medical care and treatment, including assisting Respondent  
5 to taper off his current prescription for Buprenorphine until Respondent is no longer  
6 taking Buprenorphine. Except in an *Emergency*, Respondent shall obtain medical care  
7 and treatment only from the PCP and from health care providers to whom the PCP refers  
8 Respondent. Respondent shall promptly provide a copy of this Interim Consent  
9 Agreement to the PCP. Respondent shall also inform all other health care providers who  
10 provide medical care or treatment that Respondent is participating in PHP. "Emergency"  
11 means a serious accident or sudden illness that, if not treated immediately, may result in  
12 a long-term medical problem or loss of life.

13           Respondent shall also promptly obtain a Board-certified pain management  
14 physician and submit the name of the physician to PHP in writing for approval. The pain  
15 management physician shall be in charge of managing Respondent's chronic pain.

16           8.       All prescriptions for controlled substances shall be approved by the PHP  
17 prior to being filled except in an *Emergency*. Controlled substances prescribed and filled  
18 in an emergency shall be reported to the PHP within 48 hours. Respondent shall take no  
19 *Medication* unless the PCP or other health care provider to whom the PCP refers  
20 Respondent prescribes and the PHP approves the *Medication*. Respondent shall not self-  
21 prescribe any *Medication*. "Medication" means a prescription-only drug, controlled  
22 substance, and over-the counter preparation, other than plain aspirin, plain ibuprofen,  
23 and plain acetaminophen.

1           9.     Respondent shall submit to random biological fluid, hair and/or nail testing  
2 for the remainder of this Interim Consent Agreement (as specifically directed below) to  
3 ensure compliance with PHP.

4           10.   Respondent shall enter treatment with a PHP approved psychiatrist and  
5 psychotherapist and shall comply with any and all treatment recommendations, including  
6 taking any and all prescribed medications. Respondent shall instruct the treating  
7 psychiatrist and psychotherapist to submit quarterly written reports to the PHP Contractor  
8 regarding diagnosis, prognosis, current medications, recommendation for continuing care  
9 and treatment, and ability to safely practice medicine. The reports shall be submitted  
10 quarterly to the PHP, the commencement of which to be determined by the PHP  
11 Contractor. Respondent shall pay the expenses of treatment and is responsible for  
12 paying for the preparation of the quarterly reports. At the expiration of one year or  
13 anytime thereafter, Respondent may submit a written request to the PHP Contractor  
14 requesting termination of the requirement that Respondent remain in treatment with a  
15 psychiatrist and psychotherapist.

16           11.   Respondent shall provide the PHP in writing with one telephone number  
17 that shall be used to contact Respondent on a 24 hour per day/seven day per week basis  
18 to submit to biological fluid, hair, and/or nail testing to ensure compliance with PHP. For  
19 the purposes of this section, telephonic notice shall be deemed given at the time a  
20 message to appear is left at the contact telephone number provided by Respondent.  
21 Respondent authorizes any person or organization conducting tests on the collected  
22 samples to provide testing results to the PHP. Respondent shall comply with all  
23 requirements for biological fluid, hair, and/or nail collection. Respondent shall pay for all  
24 costs for the testing.

1           12.    Respondent shall provide the PHP with written notice of any plans to travel  
2 out of state.

3           13.    Respondent shall immediately notify the Board and the PHP in writing of  
4 any change in office or home addresses and telephone numbers.

5           14.    Respondent provides full consent for the PHP to discuss the Respondent's  
6 case with the Respondent's PCP or any other health care providers to ensure compliance  
7 with PHP.

8           15.    The relationship between the Respondent and the PHP is a direct  
9 relationship. Respondent shall not use an attorney or other intermediary to communicate  
10 with the PHP on participation and compliance issues.

11          16.    Respondent shall be responsible for all costs, including costs associated  
12 with participating in PHP, at the time service is rendered or within 30 days of each invoice  
13 sent to the Respondent. An initial deposit of two (2) months PHP fees is due upon  
14 entering the program. Failure to pay either the initial PHP deposit or monthly fees 60  
15 days after invoicing will be reported to the Board by the PHP and may result in  
16 disciplinary action up to and including revocation.

17          17.    Respondent shall immediately provide a copy of this Interim Consent  
18 Agreement to all employers, supervisors, hospitals and free standing surgery centers  
19 where Respondent currently has or in the future gains or applies for employment or  
20 privileges. Within 30 days of the date of this Interim Consent Agreement, Respondent  
21 shall provide the PHP with a signed statement of compliance with this notification  
22 requirement. Respondent is further required to notify, in writing, all employers,  
23 supervisors, hospitals and free standing surgery centers where Respondent currently has  
24 or in the future gains or applies for employment or privileges of a violation of this Interim  
25 Consent Agreement. Respondent shall ensure that any and all employment agreements

1 are modified to ensure that Respondent's work schedule shall not conflict with mandated  
2 recovery activities. Respondent shall submit verification of any modifications to the  
3 monitor.

4 18. In the event Respondent resides or practices as a physician in a state other  
5 than Arizona, Respondent shall participate in the rehabilitation program sponsored by  
6 that state's medical licensing authority or medical society. Respondent shall cause the  
7 monitoring state's program to provide written quarterly reports to the PHP regarding  
8 Respondent's attendance, participation, and monitoring. The monitoring state's program  
9 and Respondent shall immediately notify the PHP if Respondent is non-compliant with  
10 any aspect of the monitoring requirements or is required to undergo any additional  
11 treatment.

12 19. The PHP shall immediately notify the Board if Respondent is non-compliant  
13 with any aspect of this Interim Consent Agreement or is required to undergo any  
14 additional treatment.

15 20. The Board retains jurisdiction and may initiate new action based upon any  
16 violation of this Interim Consent Agreement, including, but not limited to, summarily  
17 suspending Respondent's license.

18 21. Because this is an Interim Consent Agreement and not a final decision by  
19 the Board regarding the pending investigation, it is subject to further consideration by the  
20 Board. Once the investigation is complete, it will be promptly provided to the Board for its  
21 review and appropriate action.

22 22. *Respondent has read and understands the terms of this Interim*  
23 *Consent Agreement.*

24  
25 DATED AND EFFECTIVE this 4<sup>th</sup> day of August, 2015.

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ARIZONA MEDICAL BOARD

By Patricia E. McSorley  
Patricia E. McSorley  
Executive Director



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1           5.     Respondent acknowledges and agrees that upon signing this Interim  
2 Consent Agreement and returning it to the Board's Executive Director, Respondent may  
3 not revoke his acceptance of this Interim Consent Agreement or make any modifications  
4 to it. Any modification of this original document is ineffective and void unless mutually  
5 approved by the parties in writing.

6           6.     Respondent understands that this Interim Consent Agreement shall not  
7 become effective unless and until it is signed by the Board's Executive Director.  
8

9           7.     Respondent understands and agrees that if the Board's Executive Director  
10 does not adopt this Interim Consent Agreement, he will not assert in any future  
11 proceedings that the Board's consideration of this Interim Consent Agreement  
12 constitutes bias, prejudice, prejudgment, or other similar defense.

13          8.     Respondent understands that this Interim Consent Agreement is a public  
14 record that may be publicly disseminated as a formal action of the Board.

15          9.     Respondent understands that this Interim Consent Agreement does not  
16 alleviate his responsibility to comply with the applicable license renewal statutes and  
17 rules. If this Interim Consent Agreement remains in effect at the time Respondent's  
18 license comes up for renewal, he must renew his license if Respondent wishes to retain  
19 his license. If Respondent elects not to renew his license as prescribed by statute and  
20 rule, Respondent's license will not expire but rather, by operation of law (A.R.S. § 32-  
21 3202), become suspended until the Board takes final action in this matter. Once the  
22 Board takes final action, in order for Respondent to be licensed in the future, he must  
23 submit a new application for licensure and meet all of the requirements set forth in the  
24 statutes and rules at that time.  
25

1           10. Respondent understands that any violation of this Interim Consent  
2 Agreement constitutes unprofessional conduct under A.R.S. § 32-1401(27)(r)  
3 ("[v]iolating a formal order, probation, consent agreement or stipulation issued or entered  
4 into by the board or its executive director under this chapter.").

5  
6           Mark Austein M.D.  
7 MARK R. AUSTEIN, M.D.

DATED: 8-3-15

8  
9 EXECUTED COPY of the foregoing e-mailed  
this 4<sup>th</sup> day of August, 2015 to:

10 David E. Hill  
11 Law Office of David Hill, PLC  
12 300 N. Main Avenue, Suite 102  
13 Tucson, Arizona 85701  
14 Attorney for Respondent

15 Greenberg and Sucher, P.C.  
16 Address of Record

17 ORIGINAL of the foregoing filed  
18 this 4<sup>th</sup> day of August, 2015 with:

19 Arizona Medical Board  
20 9545 E. Doubletree Ranch Road  
21 Scottsdale, AZ 85258

22  
23  
24  
25  
26           Mary Baber  
27 Board Staff